

Article

Human rights in tax matters before the Chilean courts and its constitutional fundamentals



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<p><u>KEYWORDS:</u> pending</p>	<p><u>ABSTRACT:</u> This paper seeks to expose the theoretical and practical scope and effects that the Chilean courts of justice grant to the rules of human rights, in relation to tax lawsuits. To carry out this analysis, the author exposes the constitutional context related to the tax system, particularly the principles and rights, and the scope and effects of the incorporation of international human rights conventions into the Chilean legal system. The judicial decisions of the Chilean courts show that few norms of the American Convention on Human Rights are applied in tax disputes, they are generally the same norms in the same types of cases.</p>
<p><u>PALABRAS CLAVES:</u> Consejo de democráticas</p>	<p><u>RESUMEN:</u> El presente artículo busca exponer los alcances teóricos y prácticos que otorgan los tribunales de justicia chilenos a las reglas derivadas de los derechos humanos, en relación a los litigios tributarios. Para efectuar este análisis, el autor expone el contexto constitucional relativo al sistema tributario, particularmente los principios y los derechos, y los alcances de la incorporación al sistema jurídico de las convenciones internacionales de derechos humanos. Las decisiones judiciales de los tribunales chilenos muestran que se aplican escasas normas de la Convención Americana de Derechos Humanos en los litigios tributarios, generalmente son las mismas normas en los mismos tipos de casos.</p>
<p><u>MOTS CLES:</u> Conseil de Surveillance de la démocratique</p>	<p><u>RESUME :</u> Cet article vise à exposer la portée et les effets théoriques et pratiques que les cours de justice chiliennes accordent aux règles des droits de l'homme, en relation avec les poursuites fiscales. Pour mener à bien cette analyse, l'auteur expose le contexte constitutionnel lié au système fiscal, en particulier les principes et les droits, ainsi que la portée et les effets de l'incorporation des conventions internationales des droits de l'homme dans le système juridique chilien. Les décisions judiciaires des tribunaux chiliens montrent que peu de normes de la Convention américaine relative aux droits de l'homme sont appliquées dans les litiges fiscaux, ce sont généralement les mêmes normes dans les mêmes types d'affaires.</p>

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1 INTRODUCTION

This article seeks to expose the theoretical and practical scope that the Chilean courts of justice grant to human rights concerning tax disputes.

Prior to said analysis, the constitutional context of the principles and rights linked to the tax-legal relationship will be exposed, and the model of incorporation of the rules on human rights in the Chilean legal system, coming basically from the International Conventions and particularly the Convention of American Human Rights.

It should be noted that there are multiple ways to address human rights in this area.

The most usual way of studying it has been from the fundamental rights and constitutional rights more related to the tax field.

At this point, and before continuing, it is necessary first to remember the difference between fundamental and human rights ([Ruiz, 2016](#)). By the way, constitutional rights have existed since the beginning of liberal democracies (universally spread since the beginning of the 19th century), while the modern understanding of human rights is much later (mid-20th century).

The subsequent evolution of human rights and constitutional rights generates a certain conceptual and technical convergence (both present characteristics of principles and norms). For this reason, [Nogueira \(2005\)](#) emphatically presents a perspective that I can only partially share (although I cannot elaborate on the point here): “Fundamental or human rights can be understood as the set of powers and institutions that specify the demands of freedom, equality and human security as an expression of the dignity of human beings, in a specific historical context, which must be ensured, promoted and guaranteed by legal systems at a national, supranational and international level, forming a true subsystem within these .” This author confuses, in my opinion, moral demands with legal norms and defends a totalizing and expansive theory of human rights as the first and last rule of the legal system in conditions that often cannot be transformed into rules but rather into principles. This author does not recognize structural or implicit limits to fundamental rights / human rights (which he understands have the same content). Other authors, such as [Tortora \(2010\)](#), on the contrary, understand that fundamental rights have structural limits (like any right of normative content, in my opinion): “Fundamental *rights, although they should not be conditioned in terms of their exercise, are subject to limits, explicit or not*”

But in a traditional sense, the constitutional rights of nineteenth-century liberal constitutions work well as rules, while human rights present a form of moral principles. [Angulo \(2015, page 132\)](#) describes it as follows: “Human Rights terminology refers to the existence of aspirations outside of the current legal regulation, together with the moral

criteria that serve to establish them, while fundamental rights have a primary referral printmaker”.

Human rights, enshrined in the international conventions signed by Chile, are integrated into the Chilean constitutional order through article 5 of the Constitution.

The rights in the Chilean Political Constitution are expressed in numerals 21, 22, 23 and 24 of article 19. The Chilean legal doctrine has seen in these rights some limitations to the power (state) tax (in a similar sense as expressed by [Christians, A., 2017](#)).

On the other hand, constitutional rights have been seen (from an objective phase or perspective) as principles of constitutional rank. In a classification that is also useful in Chile, the Spanish doctrine, for example ([Fernández, JA & Masbernat, P., 2013](#)), has distinguished between material principles (contributive or economic capacity, equality in tax matters, the prohibition of the arbitrary discrimination, the principle of non-confiscation, progressivity...). and formal principles of taxation (reservation of law in tax matters, legal certainty, non-retroactivity...). In my opinion, this classification is useful for understanding the content and function of constitutional tax regulations in any country ([Masbernat, P. et al., 2012](#)).

Another relevant classification is between constitutional and legal rights, which in certain cases have multiple structural similarities, but are functionally different, for example, in the judicial forum in which they are defended, legal arguments or procedures ([Andres, E. & Raventos-Calvo, S., 2009](#)).

These categories have been influenced and have also influenced (in a continuous fluctuation) the idea of tax justice ([Ortega, J., 2016](#)).

Even more modernly, given that all these reflections have been carried out only in recent decades by comparative doctrine, the tax problem has been addressed from human rights, especially through the pronouncements of the European Court of Human Rights ([Díaz, N., 2016](#)) and the Inter-American Court of Human Rights ([Ramos, G. & Masbernat, P., 2019](#)).

Although there is rich jurisprudence in Europe, Latin America's activity of the Inter-American Court of Human Rights is very limited. The American Convention on Human Rights protects a wide range of rights, many of which taxpayers can use in their relationship with the State. However, the application of said Agreement in these matters is not very broad, being limited only to a case won by a taxpayer, the case “Cantos vs Argentina”, regarding a matter of legal fees and judicial protection. Other pronouncements only refer to the tax treatment of compensation for damages that private plaintiffs have obtained from States that violate human rights (see the following cases of the Inter-American Court of Human Rights: “Suárez Rosero vs Ecuador”, “Baena Ricardo and Others vs Panama”, “Myrna Mack Chang vs Guatemala”, “Loayza Tamayo vs Peru”).

In Chile, tax disputes fall under the jurisdiction of the Tax and Customs Courts in the first instance; in the second instance of the Courts of Appeals; in cassation, of the Supreme Court. It is also convenient to consider the perspective of the Constitutional Court (notwithstanding its disputed judicial nature, as it is a court of constitutionality control).

2 THE CHILEAN LEGAL SYSTEM FOR THE PROTECTION OF FUNDAMENTAL RIGHTS IN TAX MATTERS

Since fundamental rights refer to constitutional rights, this field is dominated by the Constitutional Court ([Masbernat, P., 2012](#); [Evans de la Cuadra, E., 1999](#); [Figueroa, JE, 1985](#); [Massone, P., 2018](#)).

The development (and evaluation) of specific Constitutional or Fundamental Rights in accordance with article 19 No. 20 of the Constitution can be called taxpayer rights

(subjective face) or constitutional principles that illuminate the legal system (objective face). We recognize the principle of reserve of law, the right to equality and non-arbitrary discrimination, and the right of non-confiscation of taxes (under the constitutional denomination of disproportionate taxes), as we have exposed in other studies ([Masbernat, P., 2002](#)). This field is also related to the tax system and the Constitutional Rights of other numerals of article 19 of the Constitution, and that applies to the relationship of taxpayers with State bodies: for example, the right to develop any economic activity (article 19 N°21), the right to equal treatment by the State (article 19 N°22), the right to due process (article 19 N°3). This field has been designated the “economic public order” enshrined in the Constitution ([Fernandois, A., 2012](#)).

We could summarize the constitutional tax principles as follows.

(a) The principle of the legal reserve is summarized in the universally known phrase “there are no taxes without law or representation”. It is contained in constitutional articles 19 No. 20 (principles and constitutional rights of a tax nature), 63 No. 14 (matters of law) and 65 subsections 2 and subsection 4 No. 1, which establishes the exclusive initiative in tax matters in the President of the Republic and the beginning of the legislative process in the Chamber of Deputies.

In this sense, the constitutional norm contained in article 65, subsection 4 No. 1, regarding the content of the taxing power of the President is interesting: “Impose, suppress, reduce or forgive taxes of any kind or nature, establish exemptions or modify existing ones, and determine its form, proportionality or progression.”

It is worth asking if the tax legislation delegated through Decrees with the Force of Law would be possible. The doctrine in Chile, in general, is in favour of this possibility.

Another question that falls is whether the constitutional reserve would be absolute or relative. According to the first, all the elements of the tax must be established in the law, and according to the principle of relative legal reserve, only the most relevant elements must be established in the law, being able to leave the other elements to the regulatory or sub-legal development.

(b) Principle of equality before the law and generality, enshrined in article 19 N°20. It is about applying the right of equality before the law to the tax field. This numeral has been treated as linked to the principle of non-arbitrary discrimination that the State must provide to people in economic matters, enshrined in article 19 N°20. It is possible to cite the judgments Rol N°718 (November 26, 2007), which makes pronouncements similar to the Constitutional Court Judgments No. 759 and No. 773 (of the same date). In it, the Chilean Constitutional Court maintains that the regulation of taxes constitutes a matter reserved to the law, and the Constitution -in its articles 19 N°2 and N°22- prohibits any arbitrary discrimination and must be based on criteria of generality, that is, it can only be distinguished by categories of taxpayers or general situations in which they may find themselves.

Likewise, for the Constitutional Court, in the same way that the principle of reservation of law protects the principle of equality, it guarantees the principle of non-arbitrary discrimination, as expressed in Considering 81st of the ruling: “in accordance with the provisions of Article 19 No. 22 of the Constitution, only corresponds to the legislator to establish benefits or special taxes, bearing in mind that the reliable history of said constitutional norm demonstrates that its intention was to eliminate the possibility that the Administration established benefits for certain persons, entities or activities, and that in this case the benefits or encumbrances must be established by law”.

(c) Principle of protection of property rights or non-confiscation, expressed in Chile as a prohibition on establishing manifestly disproportionate and unfair taxes and enshrined in article 19 No. 20.

It is possible in this field to cite the Judgment of the Constitutional Court Case N°718 (November 26, 2007), partially estimated by the majority, and the Judgments of the Constitutional Court No. 759 and No. 773 (both of the same date). In it, the Constitutional Court relies on previous rulings to deliver the following arguments (Considering 43° and Considering 44th): The (theoretical) issue of tax justice is an eminently value-based matter, basically referring to the taxpayer's ability to pay taxpayer (Sentence of the Constitutional Court Case No. 203); The constitutional prohibition of disproportionate and unfair taxes has been established to avoid expropriation or confiscatory taxes or that impede the exercise of business freedom (Sentence of the Constitutional Court Case No. 219); The Constitution tries to prevent "unjustifiable or irrational disproportions or injustices, and they occur when they are manifest, that is, according to the definition of the Dictionary of the Royal Spanish Academy, when they are discovered, patent, clear" (Sentence of the Court Constitutional Role No. 219).

After the Constitutional Court, it is worth referring to the jurisdictional powers of the Supreme Court and the Courts of Appeals in matters of protection of constitutional rights, particularly through the so-called resource for the protection of constitutional rights ([Ugalde, R. & Varela, J, 1993](#)). This judicial action is enshrined in article 20 of the Constitution and orders a test to be carried out to substantiate the actions of the Tax Administration (to exclude arbitrariness) and its legal support (to exclude arbitrary actions. This mechanism has been widely used by part of some taxpayers.

The third body with powers of protection of fundamental rights (particularly numerals 21, 22 and 24 of article 19 of the Constitution) are the Tax and Customs Courts, through the procedure of protection of taxpayer rights enshrined in the Tax Code, Third Book (On the competence to hear contentious tax matters, procedures and prescription), Title III (Of Special Procedures), Paragraph 2 (Of the special procedure for claims for violation of rights), in its articles 155 to 157 ([González, J., 2016](#)). Property rights, freedom to develop economic (business) activities and equal treatment that the State must provide in economic matters are protected. The issues typically claimed are non-return of remainders; arbitrary exclusion from the tax regime; the refusal of the Documentation Delivery Service; unreasonable ringing restriction; requirement of the Service to terminate the business to choose to waive interest; failure to notify the Treasury of the change in tax amount; among others ([Valenzuela, D. et al., 2015](#)).

3 JUDICIAL RULINGS OF THE COURTS IN TAX MATTERS THAT CONTAIN EXPRESS MENTION OF HUMAN RIGHTS.

In this section, we exclusively analyse the pronouncements of the courts of justice (this time, we do not include the Constitutional Court) that expressly base the sentence on the American Convention on Human Rights. To do this, we use the database of tax matters of the publishing house Thomson Reuters of Chile called CheckPoint.

For reasons of space, for purposes of this presentation, we focus only on some sentences.

It must be reiterated that it has been understood that the international human rights conventions signed and ratified by Chile have constitutional rank and are incorporated as norms in the Chilean legal system per article 5 of the Political Constitution. By the way, this interpretation presents multiple technical problems, for example, the legal delimitation of the law, its coordination with the rest of the legal system in the context of a Democratic State of Law, and the specific judicial procedures to demand them in the Courts, among others.

3.1 SUPREME COURT (SENTENCES OF CASSATION)

(a) Case “Chilean Treasury with Lastra Parra Patricio Amadeo” (case 19375-2014 of the Supreme Court, the judgment of November 10, 2014, in appeal on the merits). The Court affirms that the appellant taxpayer must base his appeal on factual or legal circumstances that delayed or delayed the conduct of the procedure and specify whether they arose from acts or omissions of the counterparty, the court or third parties; the only way for the Court to rule on a possible undue delay in contravention of the violation of Article 8 of the American Convention on Human Rights (right to be tried within a reasonable time) concerning Article 5 of the Political Constitution of the Republic

(b) Case “Pedro Barría Pacheco with General Treasury of the Republic” (case 11105-2013 of the Supreme Court. Judgment of October 1, 2014, in appeal on the merits). The dissenting Opinion of the Ministers (judges) Künsemüller and Cisternas maintains that “considerations based on respect for constitutional norms and international law require that the action of justice be quick and timely, both in listening to the defendants and in resolving the problems raised, be they civil or criminal.”

(c) Case “Industrial Molina Limitada con Servicio de Impuestos Internos” (case 5165-2013 of the Supreme Court, ruling dated April 14, 2014, appeal). This case is very interesting that it extensively uses the human rights category. It refers to the right to be heard within a reasonable time. For the Court, “the right to be tried within a reasonable time, which is part of the constitutional guarantee to receive a sentence based on a fair and rational procedure of article 19 No. 3, paragraph 6, of the Political Constitution.” In Considering 2, it first addresses the problem of whether a legal person can invoke human rights since the American Convention on Human Rights defines it as every human being (Article 1 No. 2) and that, in general, the Court Inter-American Court of Human Rights has maintained that legal entities are excluded (he cites several cases: Banco de Lima, Report N°10/91; Tabacalera Boquerón, Report N°47/97; Mevopal, SA, Report N°39/99; Bernard Merens and Family, Report No. 103/99, Bendeck-COHDINSA, Report No. 106/99, and José Luis Forzanni Ballardo, Report No. 40/05).

For the Supreme Court, the appellant legal person (Industrial Molina Limitada): “is an expression of the free development of the commercial activity of the individuals that make it up as partners and are behind it, who, being entitled holders to invoke the guarantees enshrined in the aforementioned Convention, they would be violated if the proceeding initiated through the claim filed by the company they own, were to be extended indefinitely. In addition, the Inter-American Court of Human Rights itself has ruled that the rights and obligations attributed to the names of the legal persons are resolved in the rights and obligations of the natural persons that constitute them or who act in their name and representation and, in this way, even when the figure of legal persons has not been expressly recognized by the American Convention on Human Rights, This does not restrict the possibility that under certain circumstances the individual can go to the Inter-American System for the Protection of Human Rights to assert their fundamental rights, even when they are covered by a figure or legal fiction created by the same system of law (case of Cantos vs Argentina, the judgment of September 7, 2001; and, case of Perozo et al. Venezuela, the judgment of January 28, 2009).

Under this understanding, the Court continues, “legal persons are projections of the actions of individuals under complex forms made available to them by the legal system, as an instrument for the development of their own ends,” and can “as the claimant of these orders invoke the infringement of the judicial guarantee to be judged within a reasonable time enshrined in the aforementioned Convention, even when it reserves this guardianship for the human person. “

In other cases, the Supreme Court has dealt with the right of the taxpayer to be heard by a competent court, with due guarantees, within a reasonable time, namely:

(a) Case “Sociedad Inversiones y Desarrollo SA with Internal Revenue Service” (Second Chamber Supreme Court, role 6303-2018, judgment dated October 6, 2020).

(b) Case “Ganadera y Forestal SA with Internal Revenue Service” (Second Chamber Supreme Court, case No. 2773-2018, judgment dated July 2, 2020). It is based on applying constitutional and international law rules that impose the trial within a reasonable time. It adds that the “suspension of the prescription cannot operate indefinitely”.

(c) Case “General Treasury of the Republic with Javier Moya Cucurella” (Supreme Court Second Chamber, case No. 24160-2019, judgment dated January 13, 2020). The original procedure is a procedure for executive collection of tax obligations. It refers to the right to be tried within a reasonable time. It questions that an executive procedure extends for more than a decade and declares the inadmissibility that the prescription of the tax claim can be suspended indefinitely.

(d) Case “Checho Producciones Ltda. with Internal Revenue Service” (Second Chamber Supreme Court, case No. 9464-2019, judgment dated December 12, 2019). It maintains that it is appropriate to apply constitutional and international law rules that impose judgment within a reasonable time to the claim procedure. Declares the violation of due process and the right to be tried within a reasonable time. Criticizes that a claim procedure extends beyond six years from the timely filed claim

(e) Case “Margarita Fano Ruiz with the Internal Revenue Service” (Second Chamber Supreme Court, case No. 37597-2015, judgment dated January 16, 2017). It reiterates that the right to be tried within a reasonable time enshrined in the American Convention on Human Rights is part of domestic law.

(f) Case “Fernando Echavarri Borssotto with the Internal Revenue Service” (Second Chamber Supreme Court, case No. 15929-2016, judgment dated January 10, 2017). It reiterates that the right to be tried within a reasonable time enshrined in the American Convention on Human Rights is part of domestic law. It establishes some facts: the processing for an extended period of the tax claim, more than two decades; the suspension of the prescription cannot operate indefinitely; The lengthy processing of the claim due to the annulment of the procedure followed before a court lacking jurisdiction is not attributable to the taxpayer.

(g) Case “Hugo Hormazábal Calderón with the Internal Revenue Service” (Second Chamber Supreme Court, case No. 21647-2014, judgment dated June 10, 2015). It reiterates that the right to be tried within a reasonable time enshrined in the American Convention on Human Rights is part of domestic law and that applying this principle is left to the judge’s determination.

(h) Case “Comercial Hual Limitada con Servicio de Impuestos Internos” (Supreme Court Second Chamber, case No. 13387-2014, ruling dated May 18, 2015). It maintains that the human rights protection system is limited, in principle, to the protection of natural persons; it is appropriate for a legal person to report the violation of the judicial guarantee to be judged within a reasonable period (almost 20 years in this case).

3.2 COURTS OF APPEALS (SECOND INSTANCE).

The Courts of Appeals have recognized the right to a natural judge in several cases, for example, in “Luis Zaldua Castillo against the Internal Revenue Service” (Court of Appeals of Concepción, case No. 1617-2003, judgment dated March 15, 2006).

Subsequently, it is reiterated in the case “Sociedad de Mantención Industriales Montajes y Obras Civiles Limitada v. Servicio de Impuestos Internos” before the Court of Appeals of Concepción (case 1754-2009, sentence dated January 25, 2010). The problem affects the delegation of jurisdictional functions to an official of the Internal Revenue Service, and a non-competent official pronounced the sentence, and public law suffers from nullity for violation of articles 6 and 7 of the Constitution. The sentence (“Considering 5th”) maintains that: “the delegation of jurisdictional functions is not permitted by the national legal system. On the contrary, it flows from article 73 of the Political Constitution of the Republic, which is prohibited, since said norm establishes that the faculty of Hearing civil and criminal cases, resolving them and having the judged executed, belongs exclusively to the courts established by law” (tacit derogation of the norms of articles 6, letter B and 116 of the Tax Code, which allowed it). The principles in articles Article 14 No. 1 of the International Covenant on Civil and Political Rights and Article 8 No. 1 American Convention on Human Rights are broken.

Next, the Court develops the matter in the recital: “10º.- That, although it is true that the Supreme Court, through the appeal of inapplicability due to unconstitutionality, has declared that article 116 of the Tax Code is contrary to the Constitution, such declaration is not an obstacle or incompatible with the annulment of public law that other courts can decide ex officio or at the request of a party. This is not annulment due to the infraction but due to its effects, which are the inapplicability of the case in particular. In nullity, the effects of the declaration are different, which are to take the cause back to its beginning in order for the legally competent Tax Judge to hear it and, more particularly, that the Regional Director of the Internal Revenue Service provide the claim filed and carry out the processing until the issuance of the final judgment [Aside] The determination of the current As a result of the law, all judges are competent; therefore, this Court is empowered to tacitly deem the legal powers of the Regional Director of the Internal Revenue Service to delegate jurisdiction to be tacitly repealed. Another thing is the appeal for inapplicability due to the unconstitutionality of laws, whose knowledge corresponds today to the Constitutional Court. Both procedural institutes rest on different assumptions, one constitutionality and the other repeal, and certainly the first does not result in the second.”

In several other cases, the Court of Appeals of Santiago has applied the right of the taxpayer to be heard within a fair and reasonable term (Article 8 American Convention on Human Rights), with due guarantees, if this is not respected, the violation of due process :

(a) Case “Inversiones Santa Verónica Limita con Servicio de Impuestos Internos” (Court of Appeals of Santiago, case No. 46-2019, judgment dated April 2, 2020).

b) Case “Sociedad de Inversiones San Felipe Limitada con Servicio de Impuestos Internos” (case No. 23-2019 of the Court of Appeals of Santiago, judgment dated March 11, 2020).

(c) Case “París Administradora Limitada con Servicio de Impuestos Internos” (Court of Appeals of Santiago, case No. 572-2019, judgment dated January 30, 2020). The sentence maintains that the “*determination of the guarantee to be judged within a reasonable time is left to the interpreter who must weigh the facts and specific circumstances of the process.*”

(d) Case “Mónica Ananías Kuncar with the Internal Revenue Service” (Court of Appeals of Santiago, case No. 14223-2018, ruling dated January 14, 2020).

(e) Case “MIDAS SA with Internal Revenue Service” (Court of Appeals of Santiago, case No. 4860-2018, judgment dated January 2, 2020).

(f) Case “Productos Cave SA with Internal Revenue Service” (Court of Appeals of Santiago, case No. 256-2018, judgment dated November 20, 2019).

(g) Case “Muñoz with Treasury Service of the Republic” (Court of Appeals of Santiago, case No. 2405-2019, judgment dated October 10, 2019). In addition, it applies the *iura novit curia principle*, by virtue of which “the judge can apply the law, regardless of the law invoked by the parties, having as its only limitation, not being able to alter the factual framework delivered by the parties to the process, so penalty of incurring a violation of the principle of procedural consistency.”

This cause has many reflections of relevance, so they are reproduced:

- Considering 6th: “That, regarding the law applicable to the allegation of prescription, this Court considers that in the sub judice case, Article 8.1 of the American Convention on Human Rights must be resorted to, which enshrines judicial guarantees and incorporates as such as “due process” in International Human Rights Law, understood as the set of requirements to be observed in the jurisdictional degrees in which the court hears a matter, with the power to know and resolve the facts the right that the parties are raised, whether the legal dispute takes place between individuals or between them and the State. That is, International Human Rights Law contemplates respect for “due process” so that people can adequately defend themselves against the activity of the State in this area (Ivcher Bronstein case).

- Considering 7th: “That, in order to safeguard this fundamental judicial guarantee of “due process”, the American Convention on Human Rights considers the requirements that all judicial proceedings must comply with.”

- Considering 8th: “That, consequently, it is currently considered that the “due process” is the fundamental basis of the human rights protection system, because it is reasoned that it formalizes the guarantees of all of them and is a requirement for the existence of a true rule of law; this is how the right to “due process” is also contemplated in article 6 of the European Convention on Human Rights and in article 14 of the International Covenant on Civil and Political Rights, respectively (op. cit.).”

- Considering 9th: “That Article 8.1 of the American Convention on Human Rights, cited above, is a general rule that establishes the requirements of “due process” and is applicable to all kinds of proceedings; in effect, the literal text and The spirit of this rule must be appreciated in accordance with the provision of letter c) of Article 29 of the same American Convention, according to which, no provision of it can be interpreted to the exclusion of other rights and guarantees inherent to the human being or derived from the representative democratic form of government (Blake Case, paragraph 96 and Durand and Ugarte Case, paragraph 128, op. cit.).

- Considering 11th. “That within the general requirements of “due process” the right to be heard is found in the first place, which means that, in addition to the right of every person to access the court, it also includes the obligation of the State to give the possibility that the right can be exercised by the person and the obligation to establish bodies and procedures that meet the requirements of the provision before Article 8 of the American Convention on Human Rights , and, finally, determines the requirement to provide to the interested party what is necessary with a minimum of means so that they can access them [Apart] In addition, the broad formulation of protection of the fundamental right established in the American Convention on Human Rights of “due guarantees” is related to the minimum requirements that a trial must contain, and agrees that the protection in accordance with the judicial guarantees of “due process” includes the determination of the rights and obligations civilians within the legal system, those who cannot be removed from such requirements, without prejudice to the fact that it is necessary to examine the factual background in each particular trial to assess whether it is before a “due” or “fair” process.

- Considering 12th: “That, consequently, in the particular analysis of “due process”, in the case at hand, it should be considered whether the procedure conforms to Article 8.1 of the American Convention on Human Rights, in terms of the normative element which integrates the right of the person to be heard within a “reasonable period” (Cecilia Medina Quiroga op. cit.). These grounds for the termination of the process within a “reasonable period” mean that, given the circumstance of In the case of a civil trial, due to this aspect of “due guarantees” of it, is that the procedure must give the parties time to present the evidence, examine and discuss those of the opponent, and consider the necessary deadlines for the court to can study all the antecedents to be able to base the sentence, without it being able to extend for such a time that it means, even discounting the delay attributable to the part and complexity of the matter, or n Unjustified delay on the part of the State, represented by the court, that affects the fundamental right recognized by the Convention, considering the nature of the process. In relation to the notion “within a reasonable time” according to international treaties in force, our Court of Appeals of Santiago (Case No. 65.351 1997, Considering 13, Judgment of July 4, 2005) has considered: “That, On the other hand, this Court cannot fail to consider here the international treaties approved and ratified by Chile on the matter, thus, the American Convention on Human Rights, which in its Article 8(1) provides that Every person has the right to be heard, with due guarantees and within a reasonable time... or, in its article 7.5 that Every person detained or detained... shall have the right to be tried within a reasonable time.... Likewise, the International Covenant on Civil and Political Rights, which in its article 9.3, establishes that every person detained or imprisoned... will have the right to be tried within a reasonable time... or, in its article 14.3.c referring to the accused person, it indicates that they have the right to be judged without delay improperly. A reasonable time is, therefore, an integral part of the concept of due process, to which our Constitution alludes in article 19 No. 3, subparagraph 6, when it says Every sentence of a body that exercises jurisdiction must be based on a prior process legally processed. It will be up to the legislator to always establish the guarantees of a rational and fair procedure and investigation;” Further on, he adds that “...In this context, the excessive length of this process [19 years], [..]; “...the mere existence of the process, since it implies a series of restrictions and even deprivations to the exercise of such rights, for the same reason that if the uncertainty of the duration of its duration is added to the uncertainty inherent to any trial, and to this that of an undue, unreasonable or excessive extension, the constitutional rights they run the risk of becoming a dead letter and ceasing to be so, an effective guarantee of their respect”.

(h) Case “Treasury General Treasury of the Republic with Hering” (Court of Appeals of Santiago, case No. 6537-2019, judgment dated August 5, 2019). It also makes application of the *iura novit curia*.

(i) Case “Pablo José Pérez Cruz with the Internal Revenue Service” (Court of Appeals of Santiago, case No. 14249-2017, judgment dated June 14, 2018).

Here, the Court of Appeals maintains that: “The process has never been paralyzed attributable to the Internal Revenue Service, since the main milestones show that the informal powers have been exercised to give progressive course to the cars and the delay caused, Mainly, it is related to the annulment by the Highest Court of everything that was done in the case file, given the defect that was detected. These circumstances cannot lead to a classification of undue delay since the exercise of the corrective powers of the courts of justice is intended, precisely, to adjust the processing of the procedure to the standards of due process in order to obtain a sentence handed down by a competent body, within the sphere of its powers and in accordance with the law. Although it could be considered that there is a tension between the guarantee of being tried within a reasonable time and the guarantee of due process, this Court It is considered that due process is essentially violated in the event that a sentence issued by an incompetent official has been validated, and this

made it absolutely necessary to adjust the processing in accordance with the guarantee of Article 19 No. 3, paragraph 6 of the Fundamental Charter. Otherwise, it would be validating a kind of justice at any cost, an issue that is inadmissible. Although the process has been delayed by the issuance of the judgments analysed above, the effects of said delay can be remedied by eliminating the interest and fines that have accrued, as will be indicated in the resolution of the ruling. Consequently, from the comprehensive analysis of the procedure, it is noted that it has not been paralyzed for the necessary time to apply as a sanction the ineffectiveness of the process, in accordance with the guarantees contained in Article 8.1 of the American Convention on Human Rights (Considering 4 ° to 7° of the judgment of the Court of Appeals).”

(j) Case “Miguel Asenjo Asenjo with the General Treasury of the Republic” (Court of Appeals of Santiago, case No. 11583-2017, ruling dated May 10, 2018).

3.3 TAX AND CUSTOMS COURTS (FIRST INSTANCE).

(a) Case “Internal Revenue Service with Jonathan Ormeño Moraga” (Tax and Customs Court of Santiago case file 16-9-0001592-9, ruling dated August 21, 2018). The judge addresses the right to the presumption of innocence and criminal rights.

In Considering 15, the Court maintains that: “This Court considers that, prior to evaluating the evidence, this magistracy must consider that the application of a sanction is the expression of the *ius puniendi* of the State, for which reason it is logical and necessary to apply the inspiring principles of the criminal order contemplated in the Political Constitution, specifically in numeral 3 of its article 19, and in International Treaties such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights, in such a way as to grant due jurisdictional protection to the rights of individuals. In this order of ideas, the claimant benefits from the presumption of innocence, so it will be the Internal Revenue Service that must prove the actual commission of the offence charged. [Apart] That, the Internal Revenue Service, in order to prove the concurrence of all the elements of the type of infraction sanctioned, provided and accompanied the denunciation record with a series of probative records. [Apart] That, in addition, the infraction, as an exercise of the sanctioning power of the State, must comply with another requirement of criminal law: criminality. As Professor Massone says, ‘...the first requirement for the action (or omission) to constitute a tax offence (crime or offence) is that this action has the quality of being typical.’ “

(b) Case “German Valladares Bugueno with Internal Revenue Service” (Tax and Customs Court of Santiago, case No. 17-9-0000785-K, judgment dated May 30, 2019). The right to the presumption of innocence and criminal rights are applied.

The Court, in its 13th Considering Point, maintains that: “in addition, and prior to the evaluation of the evidence, this magistracy must consider that the application of a sanction is the expression of the *ius puniendi* of the State, for which reason it is logical and necessary to apply the inspiring principles of the criminal order contemplated in the Political Constitution of the Republic, specifically in numeral 3 of its article 19, and in International Treaties such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights, of such a way to grant due jurisdictional protection to the rights of individuals. In this order of ideas, the claimant benefits from the presumption of innocence, so it will be the Internal Revenue Service that must prove the actual commission of the offence. Notwithstanding the foregoing, the claimants, and also the Court, in accordance with the provisions of the final part of subparagraph 1 of No. 4 of Article 16 5 of the Tax Code, may add other evidence to the case.”

(c) Case “Constructora OAS SA Agency in Chile with Internal Revenue Service” (Santiago Tax and Customs Court, case 17-9-0000369-2, ruling dated July 21, 2017).

The Court, in Recital 14 of its judgment, states that: “In addition, and prior to the assessment of the evidence, it must be considered by this magistracy that the application of a sanction is the expression of the *ius puniendi* of the State, for which reason it is logical and necessary to apply the inspiring principles of the criminal order contemplated in the Political Constitution, specifically in numeral 3 of its article 19, and in International Treaties such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights, in an to grant due jurisdictional protection to the rights of individuals. In this order of ideas, the claimant benefits from the presumption of innocence, so it will be the Internal Revenue Service that must prove the actual commission of the offence charged. [Apart] That the Internal Revenue Service, in order to prove the concurrence of all the elements of the sanctioned infraction type, contributed and accompanied the denunciation record with a series of probative records. [Apart] That, in addition, the infraction, as an exercise of the sanctioning power of the State, must comply with another requirement of criminal law: criminality. As Professor Massone says, ‘...the first requirement for the action (or omission) to constitute a tax offence (crime or offence) is that this action has the quality of being typical. ‘”

4 CONCLUSIONS.

Human rights (hand in hand, especially with the American Convention on Human Rights) in tax disputes, in particular, circumscribed to due process and protection, have progressed. Effective judicial process (especially the right to a trial without undue delay and within a reasonable time and the rights of proof) and, secondarily, guarantees of a criminal nature. It is not a very extensive judicial development, nor how it could be considered pertinent and opportune in light of the legal systems of the member countries of the European Union, for example. However, it represents an important advance beyond the application of constitutional rights by the Courts on the occasion of protection appeals, of the Tax and Customs Courts on the occasion of the rights protection procedure, or of the Constitutional Court itself.

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